

MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING

March 28, 2006

Present

HJ: Henry Jungmann, Chairperson

LG: Lucy Gertz

LC: Lori Capone, Director

RS: Robert Sherburne, Vice Chair

CH: Cynthia Hanna

GC: Gloria Clancy, Clerk

JK: Jeff Kablik (came in at 7:06 P.M.)

Absent

JZ: Jeanne Zarba

FZ: Frank Zarba

BL: Brian Logue, Associate Member

7:00 Meeting opened by Henry Jungmann, Chairperson

7:02 Ann Tinnirella – End of Beech Tree Road: (Continued from 8/23, 9/27, 10/25, 11/22, 12/13/05, 1/10 & 3/14/06) Conduct a hearing pursuant to an Order of Judgement by the Superior Court, dated May 23, 2005, whereby this matter is remanded to the Conservation Commission for further hearing and determination of the ownership of the affected property. Present for this hearing were Ann Tinnirella, her attorney Colleen Gary, Michael Shyjan and his attorney Julie McNeil, and Town Counsel Charles Zaroulis. HJ read the court order aloud then asked Atty. Zaroulis to give us his opinion. After each attorney gave his or her input there was some discussion. Julie McNeil asked for time to read over Attorney Zaroulis' four-page memorandum dated March 28, 2006. HJ requested that both Attorney McNeil and Gary provide the Commission with a written response within four to five days, if they would like to respond to Atty. Zaroulis' letter.

CH: Motion to continue this hearing to 4/11/06 at 7:02 P.M.

JK: 2nd.

Unanimous (5-0)

7:10 (7:16) Whispering Pines Estates – 39 Lakeview Avenue – NOI: (Map 25, Parcel 13, Lot 0) (Continued from 11/8/05, 12/13/05, 1/10, 2/14 and 3/14/06) Proposed residential townhouses, roadway, roadway crossing of an intermittent stream, drainage, grading, and associated utilities within the buffer zone. Also, removal of existing septic system, associated grading and construction of a water pump station within the buffer zone. The applicant Peter Cricones was present with Richard Kirby, wetland scientist from LEC Environmental Consultants, Inc. Mr. Kirby stated that since the last meeting he has visited the site and the replication areas that were suppose to be completed per the original OOC from 2003. He agreed that the replication was inadequate. He has reworked the plan (revised 3/21/06) and has submitted it. LC has not had a chance to review it yet. She also told the members that the applicant has still not submitted plan revisions for this current NOI in response to Holmberg & Howe's initial comments dated December 1, 2005. Peter said that they have had some back and forth with the engineers. That his engineer is still working on it. HJ asked for comments from the members and then abutters. HJ asked that any abutters with wetland concerns should put them in writing to the Commission and that will help the parties to address any pertinent issues.

RS: Motion to continue this hearing to 4/25/06 at 7:02 P.M.

JK: 2nd.

Unanimous (5-0)

7:15 (7:26) Digital Federal Credit Union – 378 Middlesex Road – NOI: (Map 12, Parcel 42) (Continued 1/10, 2/14 and 3/14/06) Construction of a one-story 4,722 square foot building with associated parking and site improvements. The site will have access points on Locust Avenue and Middlesex Road. Work will be performed within Riverfront Area, floodplain, and buffer zone of Locust

Brook. Present to answer any questions were Greg Rosen, NES Group, Steve Auger, Hayner/Swanson, Bob Prokop, Wetland Consulting Services, and Mike Monks, Agent representing the owner of the property, Peter Sarantos. They went over the last few changes of the plan per Holmberg & Howe review letters dated 2/7, 2/8, 3/9 and 3/17. The applicant has requested a waiver regarding elevation datum. They requested he be allowed to set a benchmark prior to construction instead of revising the plan contours. A conversion factor was provided on the plan. A concern of the Commission was the clearing for the second access off Locust Avenue that the Planning Board was requiring. This clearing would be against the regulations in the Riverfront Act. LC checked with DEP on this issue and was told that because the area was previously disturbed, they consider the whole project as “*redevelopment*”, and as long as they replicate *one to one* the Commission may approve it. The project received final Planning Board approval March 16th. HJ asked for member comments, LC’s input and for any abutter comments. There were no abutters.

RS: Motion to close this hearing.

LG: 2nd.

Unanimous (5-0)

JK: Motion to issue an Order of Conditions for Digital Federal Credit Union – 378 Middlesex Road per plan revised 3/14/06 with the condition that the applicant place a benchmark on the site prior to beginning the project.

CH: 2nd.

Unanimous (5-0)

7:20 (7:40) R & F Landholding LLC – Whitetail Estates – Off of Althea Drive. – NOI: (Map 33, Parcel 20)(Continued from 3/14/06) Construction of a roadway, drainage system, and two single-family dwellings with septic systems. Work on the roadway, utilities and one driveway is proposed in the buffer zone. Mike Turgeon of Turgeon Environmental Services was present to represent the applicant. Holmberg & Howe have performed their initial review of the project. The applicant is in the process of addressing that comment letter. We have not received a copy of the submittal provided to Natural Heritage from the abutters. LC performed a site visit with the Planning Board and abutters on March 15, 2006. She recommends that the Commission also do a site visit. It was set up for Saturday, April 1 at 2 P.M.

JK: Motion to continue this hearing to 4/25/06 at 7:15 P.M.

LG: 2nd.

Unanimous (5-0)

7:30 (7:45) Linette Rivera – Lot 12 River Bend Road – NOI: (Map 20B, Parcel 29, Lot 12) (Continued from 12/13/05, 1/10/06, 2/14 & 2/28/06) Clear 56’ x 12’ area for driveway/parking and place 6” or less of pervious crushed stone, clear path to dock area, storage of dock, placement of picnic table and storage container, cut invasive plants, spot treat poison ivy with Ortho Poison Ivy Killer. All work within riverfront area. Some activities located within floodplain. Town Counsel Zaroulis was present to clarify the legal issues. He announced that he is representing the Commission in a suit brought by the abutter against Ms. Rivera and the Conservation Commission and has worked with and against the law offices of Gallant & Irvin and Malonis. He read from letters from Atty. Irvin and Atty. Malonis. He read from Tyngsboro Conservation Regulations, Section 9.0 regarding waiver of regulations. It is his opinion that the Commission provided themselves with the right to waive the regulations. HJ asked for member questions. JK asked if LC was satisfied with the letter from Rivera that she has satisfied the Performance Standards. LC said that in review of the whole NOI application, Ms. Rivera has provided enough evidence that she has satisfied the performance standards. HJ asked for abutter comments. Mr. Lee wanted his letter of objections noted. HJ has concern regarding the use of herbicide to kill the poison ivy. He would rather the applicant work with LC to come up with a safer

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method of eradicating it. There was concern over the fact that the Board of Health never did formerly answer whether or not the parking area would impact the neighbor's septic system. Matt Waterman, consultant for the B.O. H. said that all they had to work with was a rough sketch. He said that he could not make a determination from that.

RS: Motion to close this hearing.

LG: 2nd.

Unanimous (5-0)

JK: Motion to issue an Order of Conditions for Lot 12 River Bend Road per plan revised October 6, 2005, to clear an area 56'x12' and add crushed stone for driveway and parking; create a pathway to the river; place a storage container; and clear the poison ivy from the area by means recommended by our Director. This OOC will also be subject to approval by Board of Health that the driveway and parking area will not have an impact on the abutter's septic system.

CH: 2nd.

Unanimous (5-0)

7:35 (8:00) Merrimac Landing Realty Trust – 91 & 95 Middlesex Road – NOI: (Map 27, Parcel 2, Lot 0 & 1) (Continued from 11/8/05, 12/13/05, 1/10, 1/24, 2/14 & 2/28/06) Construction of twenty-two, eight unit townhouse style condominiums and apartment buildings, a twenty-four foot wide access drive, parking areas, associated grading, subsurface utilities and associated landscaping, a portion of which is located within 100 feet to a resource area and within the 100 year flood plain. Matt Waterman, Steve Eriksen and Dave Trahan were present to answer questions. Since the last meeting we have received a letter from Holmberg & Howe indicating that all of their concerns have been addressed. Natural Heritage has also approved the project. LC asked them to give us a copy of that application.

JK: Motion to close this hearing.

CH: 2nd.

Unanimous (5-0)

JK: Motion to issue an Order of Conditions for 91 & 95 Middlesex Road for construction of twenty-two, eight unit townhouse style condominiums and apartment buildings, a twenty-four foot wide access drive, parking areas, associated grading, subsurface utilities and associated landscaping, per plan revised 3/7/06.

CH: 2nd.

Unanimous (5-0)

7:40 (8:10) Town of Tyngsborough – Lake Mascuppic – NOI: Implementation of an aquatic management program to control aquatic vegetation and algae utilizing various techniques including treatment with registered aquatic herbicides and algaecides.

FZ: Motion to waive the reading of the Abutters List.

CH: 2nd.

Unanimous (5-0).

JK: Motion to waive the reading of the Legal Ad

CH: 2nd.

Unanimous (5-0).

Rosemary Cashman, Tyngsborough Town Administrator, Edward Smith, Mascuppic Lake Association Chairperson, and Gerald Smith owner of Aquatic Control Technology, Inc. were present to inform the members of their plan. Mr. Smith explained that in the 1990's and early 21st century fanwort, or cabomba, was introduced and became established in Lake Mascuppic. Curly leaf pondweed has also become a problem. The Town, in corroboration with the Mascuppic Lake Association, has hired

Aquatic Control Technology Inc. to chemically treat Lake Mascuppic to control invasive species, perform localized treatment of native species in high use areas, and treat algae blooms. Ms. Cashman said that the Town of Tyngsborough has allocated \$15,000 from Community Preservation Funds and combined another approximately \$9,000 of Lake Association money to be used on the main phase of treatment as follows:

1. Fanwort (*Cabomba caroliniana*) has become establish mostly in the southern end of the lake and is proposed to be treated with a systemic herbicide called Sonar. This herbicide disrupts the production of carotenoid, which destroys chlorophyll. This is a pellet formulation requiring 2-3 applications starting in early-mid May and requires a 45-60 day contact period. The use of this chemical would restrict homeowners from using water from the lake to irrigate their lawns for 60-90 days after application.
2. Curly Pondweed is found in nearly all area less than 10 feet deep. This species is most dense in the southern end and will be the focal point for treatment. Reward, or diquat, is proposed to be used which is a liquid, contact herbicide. A single treatment will be required on an annual basis in early-mid May. Homeowners would be restricted from irrigating, drinking, or livestock watering for 5 days.
3. Native plants are proposed to be treated in high use areas. Submerged plants will be treated with Reward (diquat) and/or Aquathol-K. Floating plants will be treated with Rodeo (glyphosate). There is no treatment of native plants proposed in year one. Restrictions associated with Aquathol are a 3-day restriction on fish consumption and up to 14-day restriction on drinking, livestock watering and domestic purposes. There are no restrictions associated with Rodeo but the lake will be closed on the day of treatment as a precaution.
4. Algae: In the event of an algae bloom, copper sulfate is proposed to be utilized. There is no restriction with copper sulfate but the lake will be closed on the day of treatment as a precaution.

Alternatives to chemical treatment include drawdown, dredging, and physical barriers, none of which are effective treatments of the species in Lake Mascuppic.

The long term management plan includes the following possibilities: Establishment of a no salt zone in the Mascuppic watershed; Have the Town sweeping performed in late March instead of June; Have the Town clean out the catch basins in late March instead of June; Install signs at both boat ramps regarding boat washing; Install a boat wash station at the state boat ramp; Provide training classes on weed identification; Track weed distribution via the use of underwater cameras; Take scuba lessons so small sections of weed can be hand pulled; Work with Dracut on the ramp area.

HJ asked for comments. The members feel that the long term plan should include more community outreach regarding fertilizer use, yard waste disposal, hazardous household chemical disposal, vehicle maintenance, waterfowl management, etc. The proposal from Aquatic Control includes inspecting the lake twice a year for weed growth. It was requested that these inspections should also include a water sampling program to determine the effects these treatments are having on such parameters as dissolved oxygen, pH, and nitrogen and phosphorus levels, among others. Mr. Gerald Smith said that this was not budgeted for. Mr. Ed Smith said they would talk with member Bill Oliver, who is experienced in the field, to perform such tests. The Commission requested a sampling plan be provided. We need to understand what effect these chemicals are having on the system as a whole. There was much

discussion. HJ asked for abutter comments. The following people voiced concerns. Carol Mueller, 50 Willowdale Rd, Dracut, Jim Melanson, 57 Mascuppic Trail, Tyngsboro, William Look, Mascuppic Trail, Tyngsboro, Darlene Mattheson, 110 Mascuppic Trail, Russell Kulisich, Jocelyn Avenue and James Wood, 6 Sherbrooke St.

CH: Motion to continue this hearing to 4/11/06 at 7:15 P.M.

LG: 2nd.

Unanimous (5-0)

7:45 Walter Eriksen – Merrimac Maple LLC – Middlesex Road – NOI: (Map 27) Proposed replacement of a culvert at the corner of Middlesex Road and Tyng Road.

JK: Motion to waive the reading of the Legal Ad.

RS: 2nd.

Unanimous (5-0).

JK: Motion to waive the reading of the Abutters List.

CH: 2nd.

Unanimous (5-0).

The culvert was damaged during the installation of the sewer. We gave two Emergency Permits for this project but the work was not performed. The applicant is proposing to remove the existing 3' x 3' box culvert with two 30" reinforced concrete culverts. On the easterly side of Middlesex Road the applicant is proposing geotextile matting and riprap along the slope from the roadway to the culvert. On the westerly side of Middlesex Road the applicant is proposing geotextile matting, riprap and energy dissipating boulders at the outlet. This project proposes altering and replacing 98 feet of bank and 100 square feet of bordering vegetated wetland. The applicant is proposing to apply a New England Wetmix to the altered site and allow the wetland area to naturally revegetate. The applicant has provided calculations to demonstrate that the replacement of twin 30" reinforced concrete culverts will provide adequate capacity for the existing drainage. LC questioned when the work would be performed and how the stream would be diverted if it was running when the culvert is replaced. The applicant said work would be performed when the stream is dry or water will be pumped across Middlesex Road. MassHighway has permitted the project.

JK: Motion to close this hearing.

LG: 2nd.

Unanimous (5-0)

JK: Motion to issue an Order of Conditions for Merrimac Maple LLC to replace the culvert at the corner of Middlesex Road and Tyng Road.

CH: 2nd.

Unanimous (5-0)

Other Business:

- ❖ Walter & Steve Eriksen presented a plan for what they termed a "Wildlife Enhancement Area" on an area of the Maple Ridge Subdivision. They had previously asked the Commission if they could create a "boulder dump" there and the members were unanimously against the idea. They have a real problem disposing of the enormous amount of rock even though they have a crushing system that they are using. They propose that if they are allowed to place the extra boulders in this particular area, they will cover it with loam and seed it with a wildlife friendly mix and plantings that will encourage wildlife diversity. Steve said it would be perfect for burrowing critters. They said they would add pathways and park benches and make it a very nice area for the residents to enjoy. After a question and answer session the

members decided that an RDA should be filed. Mr. Eriksen should also provide for maintenance of the area instead of allowing the area to become overgrown.

- ❖ Matt Waterman showed a plan of Dennis Page's Farwell Road sub-division *Tyng's Crossing*. The Planning Board had them set aside a portion for "open space". He pointed it out and described it. It is approximately 1.1 acre. It is still only conceptual, not definite. The members agreed it is not the nicest piece of open space, but not a bad one. Matt wanted a consensus of acceptance before doing the work to deed it over to Conservation. They agreed they might be interested. No action was taken.

- ❖ **Director Determination** for **Warren Allgrove** who wants to plant two Hemlock trees in the center of Town. There was discussion.

LG: Motion to approve the Director Determination for Warren Allgrove to plant two Hemlock trees in the town center.

RS: 2nd.

4 Yeas; 1 Abstain (JK)

Motion Carried.

- ❖ **Director Determination** for Lot 7 Sleepy Hollow. T(Lot 5 on the plan approved by Conservation) Request for permission to change the placement of the driveway to within 70' of the BVW. The detention area will be between the driveway and the BVW.

CH: Motion to approve the Director Determination for Lot 7 Sleepy Hollow to change the placement of the driveway to within 70' of the BVW.

JK: 2nd.

Unanimous (5-0)

- ❖ **Director Determination** for Martha Finn – 9 Alden Street. She wants permission to put a high vinyl stockade fence between her property and the Veira's. It would be from the road to the waterfront. And require 17 hand-dug postholes.

JK: Motion to approve the Director Determination for 9 Alden Street for a vinyl stockade fence.

LG: 2nd.

Unanimous (5-0)

LC informed the members that Boot Hydropower lowered the level of the river today to repair the Pawtucket Dam. It will be back up by the end of the week.

LG: Motion to accept the minutes of the Conservation Meeting of 2/14/06 and the Forest & Trails meeting of 2/1/06.

RS: 2nd.

Unanimous (5-0)

JK tendered his resignation for personal reasons. The Commission was sorry to hear this and accepted his resignation with regret.

RS: Motion to adjourn.

LG: 2nd.

Unanimous (5-0).

Meeting adjourned at 10:00 P.M.

Respectfully submitted by Gloria Clancy, Conservation Clerk